

NON-CONFIDENTIAL

Before the
Office of the United States Trade Representative
Trade Policy Staff Committee

CONFIDENTIAL BUSINESS INFORMATION
REDACTED FROM PAGE 8 AND EXHIBIT A

POTENTIAL ACTION UNDER)
SECTION 203 OF THE TRADE ACT OF 1974)
WITH REGARD TO IMPORTS OF CERTAIN STEEL)

**REQUEST
OF
WELDBEND CORPORATION
TO EXCLUDE FROM IMPORT RELIEF
CARBON STEEL BUTT-WELD PIPE FITTING FORGINGS
(INCLUDED IN HTSUS 7307.93.3000, 7307.93.9030)**

Simeon M. Kriesberg
Carol J. Bilzi
Lisa L. Levine
MAYER, BROWN & PLATT
1909 K Street, N.W.
Washington, D.C. 20006-1101

Counsel for
Weldbend Corporation

November 13, 2001

NON-CONFIDENTIAL

NON-CONFIDENTIAL

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	1
I. PRODUCT DESCRIPTION: CARBON STEEL BUTT-WELD PIPE FITTING FORGINGS	2
II. PRODUCERS OF CARBON STEEL BUTT-WELD PIPE FITTING FORGINGS	3
A. Domestic Producers of Butt-Weld Pipe Fitting Forgings	3
B. Foreign Producers of Butt-Weld Pipe Fitting Forgings	4
III. REASONS FOR EXCLUDING CARBON STEEL BUTT-WELD PIPE FITTING FORGINGS FROM IMPORT RELIEF	5
A. There are Inadequate Data from Which to Determine that the Domestic Industry Requires Remediation from Injury Caused by Forgings	5
B. Restricting Imports of Fitting Forgings Would Cripple the Domestic Industry's Adjustment to Import Competition	7
C. Excluding Fitting Forgings from Import Relief Would Not Harm the Domestic Industry	9
CONCLUSION	10
Exhibit A: Weldbend Comparison of Prices of Domestic and Foreign Fitting Forgings	

NON-CONFIDENTIAL

NON-CONFIDENTIAL

EXECUTIVE SUMMARY

This exclusion request is submitted on behalf of Weldbend Corporation, of Argo, Illinois, an integrated producer of carbon steel butt-weld pipe fittings and carbon steel butt-weld pipe fitting forgings (“butt-weld pipe fitting forgings” or “fitting forgings”), in response to the Trade Policy Staff Committee’s recent request for comments as to what action the President should take under Section 201 of the Trade Act of 1974 to promote the domestic steel industry’s positive adjustment to competition. 66 Fed. Reg. 54321 (October 26, 2001). While Weldbend supports the imposition of a remedy with respect to imports of *finished* carbon steel butt-weld pipe fittings, it opposes the inclusion within the scope of such a remedy of butt-weld pipe fitting *forgings*.^{1/} Carbon steel butt-weld pipe fitting forgings should be excluded from any remedy imposed by the President, because (a) the ITC had no data to support a conclusion that imports of fitting forgings had increased or had caused serious injury, (b) restricting imports of fitting forgings would cripple the domestic industry’s ability to make positive adjustments to import competition, and (c) leaving imports of fitting forgings unrestricted would not damage the domestic industry.

^{1/} For purposes of its injury analysis, the International Trade Commission (the “ITC”) grouped together, in a product category 22 called “Carbon and Alloy Tubular -- Flanges, Fittings and Tool Joints,” 15 tariff classifications, covering carbon steel butt-weld pipe fittings (and forgings) (HTSUS 7307.93.3000 and 7307.93.9030), and 13 other carbon or alloy steel classifications (two classifications of carbon flanges, two classifications of sleeves, two classifications of alloy butt-weld pipe fittings, two classifications of alloy flanges, one classification of nipples, two classifications of other tube and pipe fittings, and two classifications of tool joints).

NON-CONFIDENTIAL

NON-CONFIDENTIAL

I. PRODUCT DESCRIPTION: CARBON STEEL BUTT-WELD PIPE FITTING FORGINGS

Carbon steel butt-weld pipe fitting forgings do not have a unique tariff classification: they are imported under the same tariff classification as finished butt-weld pipe fittings (HTSUS 7307.93.3000 for those with inside diameters under 360 millimeters and 7307.93.9030 for those with inside diameters of 360 millimeters or more). Despite sharing the same tariff classifications, finished butt-weld pipe fittings and butt-weld pipe fitting forgings are distinct products with different appearances and textures. Forgings undergo extensive manufacturing to become finished fittings — machine-beveling, shot-blasting, boring and tapering, grinding, die stamping, painting, and inspecting, among others. These manufacturing steps “substantially transform” the forging into a new product, according to customs law. *Midwood Indus., Inc. v. United States*, 313 F. Supp. 951 (Cust. Ct.), *appeal dismissed*, 57 C.C.P.A. 141 (1970).

Fitting forgings may be identified by the physical description: “fittings not machined, not tooled, and not otherwise processed after forging.” This description is analogous to the one already incorporated into the tariff schedules to distinguish finished carbon steel *flanges* (HTSUS 7307.91.5030 and 7307.91.5070) from carbon steel *flange forgings* (HTSUS 7307.91.1000). Since the Customs Service already applies the description “not machined, not tooled, and not otherwise processed after forging” to distinguish finished flanges from flange forgings for purposes of tariff classification, Customs could readily apply the same description to administer an exclusion of fitting forgings from any finished fittings that are subject to import relief.

NON-CONFIDENTIAL

NON-CONFIDENTIAL

Butt-weld pipe fittings are designed to connect sections of piping systems in commercial and public buildings and in manufacturing facilities. These particular fittings are especially used where the connections must be permanent and must withstand high pressures and other extreme conditions. There are no practical substitutes for butt-weld pipe fittings in these applications, and butt-weld pipe fittings can only be made from fitting forgings. Accordingly, there are no practical substitutes for butt-weld pipe fitting forgings.

II. PRODUCERS OF CARBON STEEL BUTT-WELD PIPE FITTING FORGINGS

A. Domestic Producers of Butt-Weld Pipe Fitting Forgings

Almost all of the butt-weld pipe fittings and fitting forgings made in the United States are manufactured by four largely integrated manufacturers: Weldbend, Mills Iron Works, Trinity Fitting Group, and Tube Forgings of America, Inc. These four are also essentially the only U.S. consumers of fitting forgings. They manufacture fitting forgings and then consume them in the captive production of their own finished fittings. Weldbend is unaware of any public source that compiles U.S. production and consumption data on butt-weld pipe fittings and fitting forgings, and it is unable to provide accurate industry-wide estimates to the TPSC.^{2/}

Industry-wide data are not critical with respect to this exclusion request, however, because the issue is not whether the product in question, fitting forgings, is produced in the United States, nor whether the domestic capacity to produce the product is sufficient to meet domestic

^{2/} The TPSC also requested projections of domestic consumption for the next several years. The same lack of data on past and present production and consumption makes estimates of future consumption speculative. In general, though, demand for butt-weld pipe fittings, and accordingly for butt-weld pipe fitting forgings, is a function of construction activity in the economy. The general economic slowdown that has become evident this year is likely to continue into the near future and depress demand for fitting forgings.

NON-CONFIDENTIAL

NON-CONFIDENTIAL

demand. Fitting forgings are produced in the United States, and there is probably domestic capacity to satisfy demand, in a purely arithmetic sense. The problem facing Weldbend is that there is no commercial market for fitting forgings.^{3/} Thus, as to those fitting forgings for which Weldbend does not have its own productive capacity, the only domestic sources to which it can turn for forgings are the other integrated producers — its own direct competitors in the finished fitting market. Understandably, these competitors have no interest in supplying Weldbend with fitting forgings at a price that would make Weldbend competitive in the finished fitting market. In short, whatever the industry-wide data would show with respect to production and consumption, the economic reality is that restrictions on imports of fitting forgings would cripple Weldbend's ability to compete in the only market that matters: the market for finished fittings.^{4/}

B. Foreign Producers of Butt-Weld Pipe Fitting Forgings

The major foreign producers of carbon steel butt-weld pipe fitting forgings known to Weldbend are as follows, in no particular order:

<u>Producer</u>	<u>Country</u>
Technoforge Group	Italy
Awaji	Thailand

^{3/} In its most recent review of the carbon steel butt-weld pipe fitting industry, the ITC commented on the minimal sales of fitting forgings among domestic producers. *See Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand*, Inv. Nos. 731-TA-308-310 and 520-521 (Review), USITC Pub. 3263, at I-12 n.2 (Dec. 1999) (domestic data on “carbon steel butt-weld pipe fittings” may “include non-captive production and shipments of unfinished fittings [but] any such shipments are believed to be small”).

^{4/} It should be noted that, with the exception of Mills Iron Works, which has a very narrow product line, the domestic producers other than Weldbend encounter the same problem of sourcing fitting forgings for which they have no productive capacity. Based on market information, Weldbend believes that both Trinity and Tube Forgings of America have purchased imported fitting forgings over the years to fill gaps in their forging capacity.

NON-CONFIDENTIAL

NON-CONFIDENTIAL

Benkan	Thailand
Sungkwanj Bend Co.	Korea
Taekwanj Bend	Korea
Benkan	Japan
Awaji	Japan
Sumitomo	Japan
Canadoil Forge	Canada
Empresas Rigas	Mexico
Cobeco	Venezuela
Interfit (Vallourec)	France
C.M.	Vietnam
Rigid	Taiwan
Wilhelm Gelbach	Germany

In addition, Weldbend believes that there are one or two major Malaysian producers, as well as a major Israeli producer.

III. REASONS FOR EXCLUDING CARBON STEEL BUTT-WELD PIPE FITTING FORGINGS FROM IMPORT RELIEF

Any remedy imposed by the President should not restrict imports of carbon steel butt-weld pipe fitting forgings. Available data do not permit the President to conclude that imports of fitting forgings are increasing, or are a substantial cause of serious injury. Moreover, restricting imports of fitting forgings would undermine any remedy accorded to finished fittings, by making it difficult for Weldbend to make positive adjustments to the competition posed by imported finished fittings. Finally, other domestic producers would not be harmed by the exclusion of fitting forgings from any remedy regarding finished fittings.

A. There are Inadequate Data from Which to Determine that Fitting Forging Imports are Increasing or are Causing Serious Injury to the Domestic Industry

Because butt-weld pipe fitting forgings are imported under the same tariff classification as butt-weld pipe fittings, there are no official import statistics for fitting forgings alone. Nor did the ITC collect data on fitting forging imports or on domestic economic performance regarding

NON-CONFIDENTIAL

NON-CONFIDENTIAL

fitting forging production. There is, therefore, no basis on which to determine whether forging imports have increased, let alone whether they have caused serious injury. Those supporting import relief with respect to fitting forgings have the burden of demonstrating that imports of forgings are increasing and are a substantial cause of serious injury. The record before the ITC is bereft of such a demonstration, and consequently the ITC's affirmative injury determination with respect to product category 22 as a whole cannot support the President's application of import relief to fitting forgings specifically. Certainly, the President should reject as speculative any recommendation of import relief that encompasses fitting forgings solely because of the happenstance that fitting forgings share a tariff classification with finished fittings, as to which a strong record in support of import relief has been established.^{5/}

This lack of data is problematic on another front as well. Internal Commission guidance states that the Commission is bound to recommend “only that relief which is ‘necessary’ to prevent or remedy injury” and “should not recommend relief on products or sub-products where relief is not necessary,” lest there be “higher claims for compensation or additional retaliation by adversely affected trading partners.” *Remedy Recommendations in Section 201 Cases*, GC-I-101, 1985 ITC GCM LEXIS 92, at *20 (June 4, 1985). Because there are no data for butt-weld pipe fitting forgings, it is impossible to determine how much — or how little — remedy is “necessary.” While the President is not bound by Commission precedent, the same statutory and

^{5/} Notably, excluding butt-weld pipe fitting forgings from any remedy imposed by the President would cure the anomaly that carbon steel *flange* forgings (HTSUS 7307.91.1000) were not included in this investigation by the U.S. Trade Representative. As Weldbend (a manufacturer of both butt-weld pipe fittings and flanges) noted in testimony before the ITC, it makes no commercial sense to subject fitting forgings to restrictions while excluding flange forgings, since the two types of forgings play precisely the same role in their respective markets.

NON-CONFIDENTIAL

NON-CONFIDENTIAL

policy imperatives should inform his decision-making. The TPSC should, therefore, carve fitting forgings out of any import relief it recommends that the President impose.

B. Restricting Imports of Fitting Forgings Would Cripple the Domestic Industry's Adjustment to Import Competition

Although Weldbend is an integrated producer of a wide range of butt-weld pipe fitting forgings and butt-weld pipe fittings, there are a number of butt-weld pipe fitting forgings that it does not make, typically because the market demand for the corresponding butt-weld pipe fitting is insufficient to warrant the required investment in plant and forging machinery. To fill the gaps in its forging capacity, and to offer a complete line of butt-weld pipe fittings at competitive prices, Weldbend must purchase certain fitting forgings. Because there is effectively no commercial U.S. market for fitting forgings, Weldbend is disabled from obtaining from domestic sources adequate supplies of competitively priced fitting forgings.

Weldbend would satisfy its needs domestically if it could, but its attempts to do so are frustrated by two problems. First, many domestic forging companies are simply too small to supply Weldbend with the substantial volume and consistent quality that Weldbend, as one of the largest fitting producers in the United States, requires. Second, the forging companies that do manufacture substantial volumes of fitting forgings are integrated producers of butt-weld pipe fittings that compete directly with Weldbend. Although one of these competitors — Trinity Fitting Group — testified before the ITC that it would willingly sell forgings to Weldbend, it did not state at what price it would do so, and its actions over many years speak louder than words. As James Coulas, Sr., Chairman of Weldbend, explained in sworn testimony before the ITC,

The large domestic producers that compete with us in the finished fitting market have no interest in supplying us forgings at compe-

NON-CONFIDENTIAL

NON-CONFIDENTIAL

titive prices. In the many years that we have been in business, these competitors of ours have time and again declined to offer fitting forgings to us at competitive prices.

Attached as Exhibit A is a comparison by Weldbend between recent price quotations for particular butt-weld pipe fitting forgings that Weldbend received from another integrated fitting producer, Hackney (currently part of Trinity Fitting Group), and prices for the same butt-weld pipe fitting forgings that Weldbend was able to find from reliable offshore suppliers. The Hackney quotations are invariably so much higher than the prices available from foreign suppliers that Weldbend would be unable to sell fittings made from Hackney forgings at a competitive price in the United States. These comparisons are typical of the experience that Weldbend has had in trying to source certain fitting forgings from domestic integrated producers.

For Weldbend, imports of butt-weld pipe fitting forgings are essential if its butt-weld pipe fittings are to remain competitive with butt-weld pipe fittings from around the world.^{6/} Restrictions on imported fitting forgings would also impede adjustments to import competition by any other butt-weld pipe fitting producer that sought, in the wake of import relief on finished fittings, to expand its product line beyond its current forging capabilities. Thus, imposing any remedy on this necessary, and crucial, input would only handicap the domestic industry in adjusting to import competition.^{7/}

^{6/} By way of illustration, Weldbend produced about [] of butt-weld pipe fitting forgings during 2000, all of which were used in its production of finished fittings. During the same year, Weldbend purchased about [] of imported fitting forgings, or about [] of its total fitting forging needs that year.

^{7/} The ITC has recognized in the past that “products that are either not available from domestic suppliers or are not available in commercially significant volumes” should not be subject to import restrictions. *Certain Steel Wire Rod*, Inv. No. 201-TA-69, USITC Pub. 3207, at I-56 (July 1999) (separate views of Chairman Miller and Commissioner Koplan).

NON-CONFIDENTIAL

NON-CONFIDENTIAL

C. Excluding Fitting Forgings from Import Relief Would Not Harm the Domestic Industry

Leaving fitting forging imports unrestricted would in no way damage the domestic industry. Because the use of imported forgings is limited to gaps in forging capacity, and because all of the major butt-weld pipe fitting producers are largely integrated, the volume of imported forgings is likely to remain low. Furthermore, because all of the domestic producers compete exclusively in the finished fitting market, imported forgings would never confront them in the marketplace.^{8/} Finally, to the extent that any of the integrated producers, Weldbend or others, found it more economical to source particular fitting forgings from abroad rather than making them domestically, they would be free to do so, thereby enhancing their competitiveness in the U.S. market for finished fittings. In sum, the small volume of imported forgings needed by domestic butt-weld pipe fitting producers is conducive to a more competitive domestic fitting industry. Leaving such forgings unrestricted would thereby serve the purpose of Section 201.^{9/}

^{8/} Certain of Weldbend's competitors have claimed before the ITC that excluding fitting forgings from import relief would permit importation of "almost finished" fittings, thereby circumventing any remedy against finished fittings. This claim is unfounded. Fitting forgings are not "almost finished": they require substantial manufacturing to be made into a finished fitting. The "almost finished" fittings to which Weldbend's competitors refer would not meet the physical description of a forging cited above — "not machined, not tooled, and not otherwise processed after forging" — and therefore they would not be able to be imported within any exclusion for forgings.

^{9/} Taking into account not only the domestic production capacity for forgings but also the price at which domestic forgings are available as inputs for Weldbend is consistent with the mandate of Section 201 to promote competitiveness with imports. Whatever the theoretical ability of the domestic industry to "pool" its forging capacity and do without foreign forgings, the commercial reality is that U.S. competitors do not make forgings available to other competitors at prices that would enable the latter to compete in the market for finished flanges. Since foreign forgings are not, within the Section 201 context, considered to be unfairly traded, there is no reason for them to be restricted if their entry is actually crucial to the domestic industry's ability to compete.

NON-CONFIDENTIAL

NON-CONFIDENTIAL

CONCLUSION

The record compiled during the ITC investigation does not permit the President to ground a remedy against butt-weld pipe fitting forgings on any evidence of increasing or injurious imports. To the contrary, the record makes plain that the availability of imported fitting forgings is essential if U.S. producers of finished fittings are to be competitive with finished fitting imports. The volume of such forging imports is likely to remain small, since the only possible users of imports are the same integrated producers that already have substantial forging capacity for most of their needs. In any event, if imported forgings are unrestricted, every integrated producer will have the same opportunity to make or purchase the forgings that it needs in order most effectively to compete in the market for finished fittings. The President should exercise his authority under Section 201 to promote positive adjustment to import competition by ensuring that the opportunity to compete does not become the preserve of only a portion of the domestic fittings industry.

Respectfully submitted,

/s/ Simeon M. Kriesberg

Simeon M. Kriesberg
Carol J. Bilzi
Lisa L. Levine
MAYER, BROWN & PLATT
1909 K Street, N.W.
Washington, D.C. 20006-1101

Counsel for
Weldbend Corporation

November 13, 2001

NON-CONFIDENTIAL

NON-CONFIDENTIAL

EXHIBIT A

NON-CONFIDENTIAL

WELDBEND CORPORATION

6600 SOUTH HARLEM AVENUE • ARGO, IL 60501-1930

PHONES

773 - 582 - 3500

708 - 594 - 1700

FAX

773 - 582 - 7621

708 - 458 - 0106

ORDER NO. _____

TAG NO. _____

QUANTITY	SIZE	DESCRIPTION
		HACKNEY QUOTE TO
		W/B ON 4-26-00 OFFSHORE
		Purchased
	14" STD 1/2 R 90	[]
	16 " "	
	18 " "	
	20 " "	
	24 " "	
		QUOTED 6-16-00
	3 1/2" STD 1/2 R 90	[]
		QUOTED 7-21-00
	16 STD 1/2 R 90	[]
	18 " " "	
	4 X 5 TEES	